

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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SUPERIOR SEAFOODS, INC.,  
SUPERIOR SEAFOODS, LLC,  
QUALITY FINER FOODS, INC., and  
LOUIS E. KEMP,

Civil No. 06-2543 (JRT/AJB)

Plaintiffs, **ORDER AFFIRMING MAGISTRATE  
JUDGE'S DENIAL OF MOTION TO  
STAY LITIGATION**

v.

TYSON FOODS, INC. and CONAGRA  
GROCERY PRODUCTS COMPANY,  
LLC,

Defendants.

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Craig A. Goudy and Marcy S. Wallace, **COX GOUDY MCNULTY & WALLACE**, 100 North 6th Street, Suite 676A, Minneapolis, MN 55403, for plaintiffs.

Amy J. Benjamin and Eric A. Prager, **DARBY & DARBY PC**, 7 World Trade Center, 250 Greenwich Street, New York, NY 10007; and Joseph J. Mihalek, **FRYBERGER BUCHANAN SMITH & FREDERICK, PA**, 302 West Superior Street, Suite 700, Duluth, MN 55802, for defendant Tyson Foods, Inc.

John P. Passarelli and Patrick C. Stephenson, **KUTAK ROCK, LLP**, 1650 Farnam Street, Omaha, NE 68102; and Joseph J. Roby, Jr, **JOHNSON KILLEN & SEILER**, 230 West Superior Street, Suite 800, Duluth, MN 55802, for defendant ConAgra Grocery Products Company, LLC.

This matter is before the Court on defendants' objections to an Order issued by United States Magistrate Judge Franklin L. Noel on September 18, 2007. The Magistrate Judge's order denied defendants' motion to stay proceedings in this case pending the resolution of a related case, *Superior Seafoods, Inc. v. Hanft Fride P.A. (Hanft Fride)*,

No. 05-170 (D. Minn. filed Jan. 27, 2005). The Magistrate Judge explained that it would be improper to grant defendants' motion, because the Court in *Hanft Fride* has already stayed proceedings pending the resolution of *this* case. See Civil 05-170, Docket No. 110. The Magistrate Judge explained that granting defendants' motion would result in "litigation deadlock, whereby both cases would be stayed pending the resolution of the other."

Defendants now contend that the order in *Hanft Fride* was entered before all of the affected parties had an opportunity to be heard, and provide a lengthy argument for why it would better promote judicial economy to stay the instant action and allow *Hanft Fride* to go forward. Plaintiffs disagree with defendants' assessment of the proper ordering of these cases, and suggest that the Magistrate Judge was correct to prevent a standstill.

"The standard of review applicable to an appeal of a magistrate judge's order on a nondispositive issue is extremely deferential." *Reko v. Creative Promotions, Inc.*, 70 F. Supp. 2d 1005, 1007 (D. Minn. 1999). This Court will reverse such an order only if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Local Rule 72.2(a).<sup>1</sup> Here, the Court finds nothing in the record indicating that the Magistrate Judge's decision fell below that standard. In essence,

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<sup>1</sup> Defendants argue that the clearly erroneous standard should not apply in this case, because the Magistrate Judge "never reached the merits." However, the Court finds nothing in Local Rule 72.2(a) or Rule 72(a) of the Federal Rules of Civil Procedure that supports defendants' argument. The Magistrate Judge briefly explained a clear bar to granting defendants' motion, and nothing about that analysis suggests that a lower standard of review is appropriate.

defendants would like the Court to review the order staying proceedings in *Handt Fride*. However, the appropriate place for defendants to contest that ruling is in front of the judge who issued it. So long as that stay is in place, this Court agrees with the Magistrate Judge that it would be inappropriate to bring both cases to a halt.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant's objections [Docket No. 92] to the Order denying defendant's motion to stay proceedings pending resolution of related case are **OVERRULED**.

2. The Magistrate Judge's Order dated September 18, 2007 [Docket No. 91] is **AFFIRMED**.

DATED: January 14, 2008  
at Minneapolis, Minnesota.

s/John R. Tunheim  
JOHN R. TUNHEIM  
United States District Judge